

## **REMARKS**

### **Formal Matters**

Claims 115-125 are pending after entry of the amendments set forth herein.

Claims 1-114 have been canceled without prejudice.

Claims 120-121 are currently withdrawn from consideration by the Examiner.

Applicants respectfully request consideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

### **The Office Action**

#### **Claims Rejected Under 35 U.S.C. Sections 102/103 - Jensen**

In the Official Action of January 23, 2009, claims 115-119 and 122-123 were rejected under 35 U.S.C. Section 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. Section 103(a) as being obvious over Jensen, U.S. Patent No. 3,572,326.

The Examiner asserted that Jensen discloses a frame member that includes elongate bar 33 and elements 18-20, 22-24 and 42. The Examiner asserted that Jensen discloses a first rib engaging blade/arm 49 and a second opposed rib engaging blade/arm 47 or 46 and a support arm 48 having a sternal pad element 55. The Examiner asserted that a method of using the Jensen device includes at least a step of driving two ribs apart and lifting one rib with second blade 47 or 46 relative to first blade 49.

Applicants respectfully submit that Jensen fails to disclose, suggest, or render obvious a method for providing surgical access through an intercostal incision, as recited by all of the present claims. Rather, Jensen provides a retractor apparatus that employs two inverted U-shaped supporting members adapted to extend over an operating table with the side legs of the supporting members straddling and each adjustably secured to the table, see column 2, lines 9-12 and Figs. 1-2. The curved portions of the supporting members have a radius of curvature approximating the distance between the outer extremities of the limbs and the vertebral column of a human of average dimensions, so that upon the retracting element being engaged with the edge portion of an incision in the chest and rigidly fastened with respect

to the bar, the bar can be adjusted outwardly about said curved portion of the supporting members to move the chest wall outwardly and upwardly, see column 2, lines 18-27. Accordingly, the apparatus of Jensen et al. is a sternal retractor, used to separate left and right sides of the rib cage, via a sternal incision. The apparatus of Jensen cannot be used in an intercostal incision as claimed, because the curved members run substantially parallel to such an incision and would not operate to retract the sides of such an incision. Nor would it have been obvious to modify the apparatus of Jensen to make the curved sections extend lengthwise along the table, because the bar 33 would be obstructed by the patient when attempting to move it inferiorly (or superiorly) and downwardly along the curvature of the curved portions. Still further, Jensen notes at column 6, lines 21-22, that the retractor 49 prevents rotation of the body of the patient by using the apparatus as described.

To further clarify the distinctions noted above of the present invention over Jensen, claim 1 has been amended to clarify that the ribs engaged are opposed to one another, but also in a superior-inferior relationship. It is respectfully submitted that Jensen is incapable of operating on superiorly-inferiorly adjacent ribs adjacent and intercostal incision as claimed.

Similarly, claim 122 has been amended to clarify that the second rib engaging blade is inserted into the incision and under at least one rib adjacent to the incision, opposite to, and inferior or superior of the at least one rib under which the first rib engaging blade has been inserted.

Accordingly, in view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 115-119 and 122-123 under 35 U.S.C. Section 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. Section 103(a) as being obvious over Jensen, U.S. Patent No. 3,572,326, as being inappropriate.

#### **New Claims 124-125**

New claims 124-125 have been submitted, which depend from claims 115 and 118, respectively. Support for these claims can be found, for example at pages 61-64 of the specification and throughout the specification and drawings. The Examiner is respectfully requested to indicate the allowance of claims 124-125 in the next Official Action.

**Conclusion**

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-006CON3.

Respectfully submitted,  
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